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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2022-

### REVISING AND RE-ADOPTING A DROUGHT EMERGENCY REGULATION FOR THE RUSSIAN RIVER WATERSHED

#### WHEREAS:

1. On April 21, 2021, Governor Gavin Newsom declared a drought state of emergency in Mendocino and Sonoma counties due to drought conditions in the Russian River watershed ([April 2021 Proclamation](#)). The April 2021 Proclamation finds that it is necessary to act expeditiously to mitigate the effects of drought conditions in the Russian River watershed, both to ensure the protection of health, safety, and the environment and to prepare for potential sustained drought conditions. The April 2021 Proclamation directs the State Water Board to address the acutely dry conditions in the Russian River watershed and to consider (a) modifying requirements for reservoir releases or diversion limitations in the watershed to ensure adequate, minimal water supplies for critical purposes; and (b) adopting emergency regulations to curtail water diversions when water is not available at water rights holders' priority of right or to protect releases of stored water. As it pertains to these emergency regulations, the April 2021 Proclamation suspends the California Environmental Quality Act (CEQA) to the extent necessary to address the impacts of the drought in the Russian River watershed.
2. Despite occasional precipitation events, the conditions described by the April 2021 Proclamation have continued, and subsequent executive orders have extended and expanded the authorities and directives contained in the April 2021 Proclamation.<sup>1</sup>
3. The Russian River watershed is experiencing extremely dry conditions in 2022, which is in its third consecutive year of drought conditions. As of April 14, 2022, most of the Russian River watershed is in Severe or Extreme Drought, as categorized by the National Drought Mitigation Center. Cumulative rainfall in the watershed, as measured at the Ukiah Municipal Airport from October 2021 to March 2022, was just 16.33 inches, or only 48% of the average precipitation

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<sup>1</sup> Governor Newsom's May 10, 2021 executive order formally expanded emergency drought status to include more counties (41 total counties); his July 8, 2021 executive order called for statewide voluntary 15% water use reduction compared to 2020 levels. His October 19, 2021 executive order classified the entire state to be in a drought emergency. His March 28, 2022 executive order tightened water use restrictions statewide.

# DRAFT

during this period. January through March 2022 were the driest in recorded in state history. As of April 18, 2022, Lake Mendocino held just 45,762 acre-feet of its authorized storage capacity of 122,500 acre-feet. As of April 18, 2022, Lake Sonoma, which has an approximate capacity of 381,000 acre-feet, held only 143,158 acre-feet.

4. There is an urgent need to address anticipated severe water shortages in the Russian River watershed to ensure continued access to water for human health and safety needs. Within the Russian River watershed, there are twenty-five community water systems regulated by the State Water Board's Division of Drinking Water that serve a reported population of 61,000 users. Of these systems, twenty have domestic water sources dependent on continued flows in the river's mainstem. Additionally, Sonoma County Water Agency (Sonoma Water) acts as a wholesale water system that supplies domestic water to eight cities and districts serving over 600,000 people. The California Water Code declares water supplies for consumption, sanitation, and cooking as a human right (Wat. Code, § 106.3); that domestic use is the highest priority of water use (Wat. Code, § 106); and provides water suppliers with authority to declare a water shortage emergency to allow sufficient water for human consumption, sanitation, and fire protection. (Wat. Code, § 350.) Additional efforts are needed in the Russian River watershed to ensure that these suppliers have uninterrupted access to water for these statutorily defined uses under drought conditions.
5. Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch*) are listed as endangered under the state and federal Endangered Species Acts, and CCC steelhead (*Oncorhynchus mykiss*) (CCC steelhead) are listed as threatened under the federal Endangered Species Act. Since being listed, CCC coho salmon populations have continued to decline and the California Department of Fish and Wildlife (CDFW) and the National Marine Fisheries Service (NMFS) consider CCC coho salmon to be among the species at highest risk of extinction in the country. Water supply and flood control operations in the Russian River watershed are subject to a 2008 Biological Opinion by the National Marine Fisheries Service (NMFS) to promote the survival and recovery of CCC steelhead, CCC coho salmon, and CCC Chinook salmon.
6. Sonoma Water holds water rights authorizing the storage, diversion, and use of water impounded at Coyote Valley Dam, the dam that creates Lake Mendocino. State Water Board Decision 1610 requires Sonoma Water to release water from Lake Mendocino to ensure that specified flow requirements are met along the mainstem of the Upper Russian River until its confluence with Dry Creek in order to protect endangered fisheries. Protecting storage releases from unlawful, out-of-priority diversions for the benefit of these endangered fisheries remains a critical need justifying the emergency regulation in 2022. Out-of-priority

# DRAFT

diversions exacerbate the drawdown of storage levels at Lake Mendocino and increase the risks posed to the native fisheries, endangered species, and other public trust resources.

7. The emergency regulation adopted on June 15, 2021, identified 20,000 acre-feet as a critical level of carryover storage to be maintained in Lake Mendocino past October 1. Preserving this storage level was identified as critical for ensuring Lake Mendocino could continue releases into the following year should drought conditions persist. The need to preserve at least 20,000 acre-feet in storage by October 1 continues to be essential for the protection of future drinking water needs and protection of endangered fisheries along the Russian River. Recent projections prepared by Sonoma Water indicate there is a risk that storage conditions could again fall below 20,000 acre-feet by October 1 if dry conditions persist and Pacific Gas & Electric reduces flows from the Potter Valley Project to critical year type conditions to preserve water stored in Lake Pillsbury. It is possible that by Summer 2022, natural flows and flows from the Potter Valley Project will be extremely limited and Lake Mendocino storage releases will comprise nearly all of the water flowing in the mainstem of the Upper Russian River. Out-of-priority diversions exacerbate the risk Lake Mendocino will have insufficient carryover storage to address continued drought conditions in Winter 2022 and into 2023.
8. Sonoma Water's Permit 12947A requires that it release water from Coyote Valley Dam to meet the demands of junior appropriators in the Russian River Valley in Sonoma County not to exceed 10,000 acre-feet per year, except to the extent that retention of stored water is necessary to ensure satisfaction of the minimum stream flows required by the permit. Given the shortage in Lake Mendocino storage levels, clarification of minimum storage levels necessary to ensure satisfaction of minimum flows must be provided to make clear when the stored water is unavailable to satisfy the needs of these junior appropriators in Sonoma County.
9. Despite imposing curtailments in 2021, dry conditions and stream flow losses along most reaches of the mainstem of the Russian River persisted throughout the watershed. Further actions are needed to ensure adequate, reliable water supplies for minimum human health and safety needs, and to prevent the unreasonable use of water in the Russian River watershed.
10. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority

# DRAFT

of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”

11. Article X, section 2 of the California Constitution declares that the water resources of the state must be put to beneficial use in a manner that is reasonable and not wasteful. Relevant to the current drought conditions, the California Supreme Court has clarified that “what may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time.” (*Tulare Dist. v. Lindsay Strathmore Dist.* (1935) 3 Cal.2d 489, 567.) In applying the reasonableness doctrine, the State Water Board has a duty to consider the state’s public trust resources, including fisheries. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The reasonable use doctrine applies to the diversion and use of both surface water and groundwater, and it applies irrespective of the type of water right held by the diverter or user. (*Peabody v. Vallejo* (1935) 2 Cal.2d 351.) Accordingly, this regulation is in furtherance of article X, section 2 during this drought emergency.
12. Adoption of the proposed emergency regulation update is necessary for the State Water Board to address immediate and anticipated water shortages in the Russian River watershed and to enforce the water right priority system efficiently and effectively. Shortages of natural flow to meet all water rights needs account for the concomitant need to curtail diversion and use of water from the Russian River based on priority of right and to prevent the diversion of releases of stored water for which downstream users do not have a basis of right. An emergency regulation will ensure the State Water Board can act in a timely manner to enforce the water right priority system with respect to all water right holders, and this is the gravamen of the emergency regulation. However, in limited circumstances, diversions for minimum human health and safety needs, where there is no feasible supply, may be excepted from curtailment orders. This exception recognizes that these uses are reasonable in this time of dire shortage and safeguards the human right to water for residents of Sonoma and Mendocino Counties. Immediate action is needed to renew the State Water Board’s authority to prevent the unreasonable use of water in the Russian River watershed, to support minimum health and safety needs for this water year, and to address the risk of an on-going drought emergency in 2023.
13. Although Lake Sonoma is not at immediate risk of emptying, storage levels are at below-average conditions for this time of year. Lake Sonoma provides critical drinking water reserves necessary for mitigating the risk of continued drought conditions in 2023. Lake Sonoma also supports important fishery hatchery operations and flows for endangered fisheries along Dry Creek and the Lower

# DRAFT

Russian River, all of which are dependent in part on maintaining sufficient cold water. Unnecessary drawdowns of storage at Lake Sonoma due to out of priority diversions exacerbates risks to both drinking water and endangered fisheries in future years should drought conditions persist. Given the low cumulative precipitation in the watershed, emergency regulations to support and enforce findings that supplies are insufficient to meet water right demands in the Russian River downstream of Dry Creek, and in the Dry Creek watershed, are also necessary to ensure protection of senior water right holders and public trust resources.

14. The State Water Board is readopting the emergency regulation due to severe emergency drought conditions and the need for prompt action.
15. Revisions to the drought emergency regulation governing the Russian River watershed necessitate corrections to cross-references appearing in drought emergency regulations governing other watersheds, though no substantive changes are being adopted for those other emergency regulations at this time.
16. Emergency regulations adopted under Water Code section 1058.5 remain in effect for up to one year.
17. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to staff.

## THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, sections 875.5, 875.6, 876.1, 877, 877.1, 877.2, 877.3, 877.4, 878, 878.1, 879, 879.1, 879.2, and 880 as appended to this resolution as an emergency regulation;
2. The State Water Board staff will submit the regulation to Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director, the Deputy Director for the Division of Water Rights, or their designees may make such changes; and

## **D R A F T**

4. This regulation shall remain in effect for one year after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulation due to continued drought conditions as described in Water Code section 1058.5.

### **CERTIFICATION**

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 10, 2022.

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Jeanine Townsend  
Clerk to the Board